

have it. In the 1950s and the 1960s, there were abuses by our intelligence agencies where they were wiretapping Americans without warrants. In fact, a friend of mine gave me a copy once of a declassified memorandum signed by Robert Kennedy and J. Edgar Hoover that authorized the wiretapping of Martin Luther King. So there were abuses in the 1950s and 1960s, and the 1978 Foreign Intelligence Surveillance Act was put in place. The intention of it was to say if you want to collect foreign intelligence in the United States, and there are reasons to do so, you go to a special court called the FISA Court and get a warrant.

There are folks we suspect of being spies who are here in the United States, people working for the Soviet Union, at that time, or Cuba or China, and you want to be able to go to a court and get a warrant to listen to someone in the United States. And the Foreign Surveillance Intelligence Court was set up for that purpose. But it was written in a way that was technology specific.

In 1978, that was the year I graduated from high school. The telephone was on the wall in the kitchen, and it still had a dialy-thing in the middle. It wasn't even a push-button phone at my house. The Internet didn't exist. Cell phones were Buck Rogers stuff. So the law was written in a technology-specific way that said over-the-air communications you can listen to, you don't need a warrant for that. And at the time, almost all international calls were over the air. They were bounced over a satellite. But to touch a wire in the United States, it is presumed to be a local call and you need a warrant.

Of course today, the situation is reversed. There are over 200 million cell phones in America, and all of that communication is bouncing over the air. But that is not what we need for foreign intelligence and to prevent another terrorist attack.

So, ironically, we now have a law written specific to 1978 technology which does not protect local calls and does protect international calls. Why, because today almost all international calls are over a wire or a fiberoptic cable. And because of the way that global telecommunications is now routed, telecommunications now follow the path of least resistance, and it is entirely probable that a phone call from northern Spain to southern Spain may transit the United States because that might be the path of least resistance. Likewise, a call from Afghanistan to Pakistan or a call from the Horn of Africa to Saudi Arabia may well transit the United States. But in order to listen to that communication, if you touch a wire in the United States, our courts were saying you have to have a warrant.

So we now have the situation that was building up last year where we had intelligence agencies trying to develop statements of probable cause to get a warrant to touch a wire in the United

States to listen to foreigners in foreign countries principally for the issue of preventing terrorism because terrorists use commercial communications. And so we had this huge backlog of requests. And it is worse than just the time it takes to develop a case for probable cause or to go to the courts and the time it takes our experts to be able to take time away from actually listening to terrorists to explain to other lawyers and judges why they believe someone is affiliated with a terrorist group. Sometimes you can't meet that high standard of probable cause.

Think about this for a second. If we are trying to get a warrant on someone here in the United States because we believe they are involved with organized crime, you have all of law enforcement to go out and look at what they are doing and talk to their neighbors and so on. If you have someone who is a suspected terrorist living in the Horn of Africa, you can't send the FBI out to talk to their neighbors. Sometimes the probable cause standard is too high to meet; and as a result, by the middle of last year, we had lost two-thirds of our intelligence collection on terrorism. The law had to be changed.

In the first week of August we changed it with the Protect America Act. Eighteen days ago that act expired. Now, to their credit, they worked through the backlog in that 6 months and they were able to get collections started on that whole backlog of intelligence collection related to terrorism. Those won't expire for a year. But here's the problem. New tips come in every day.

I sometimes go out and visit our intelligence agencies in my role as the ranking member of the Technical and Tactical Intelligence Subcommittee. Sometimes the director of that particular agency will say, Congresswoman, I know you are here to get a briefing on such and such a program, but I want you to know the threats we are following today. This is who we are looking for today. This is the tip we got yesterday that we are trying to track down. We have 12 terrorists who transited Madrid who just finished training in Pakistan. We are trying to figure out where they are going. We think we know the throw-away cell phone numbers that they picked up in the rail station in Bonn. We need to listen to them to figure out their plans, capabilities, and intentions. Are they going to kill Americans tomorrow?

That's why this is so important. We have to match the terrorists stride for stride, and we can't afford to have delays in intelligence collection when we are trying to prevent another terrorist attack.

Mr. McCAUL of Texas. Mr. Speaker, as so eloquently stated by the gentlelady, this is about saving American lives, first and foremost. That is the issue at stake here. And it is also about protecting our war fighters so we

don't have to go through a court in the United States to get a warrant to hear what al Qaeda is saying overseas about the threats to our military.

Mrs. WILSON of New Mexico. If the gentleman would yield for a question, is it true that if we have soldiers in a war zone, whether it is Iraq or Afghanistan, if we have soldiers in a war zone, that they may actually be authorized to shoot an insurgent, but they have to go back to talk to lawyers in Washington in order to listen to them? Is that true?

Mr. McCAUL of Texas. That is the absurd result of us failing to pass the Protect America Act in this body. It is putting our soldiers at grave risk.

These constitutional protections, to extend them to foreign terrorists, the FISA when it was enacted was not enacted to give foreign terrorists constitutional protections. It was enacted, if you are an agent of a foreign power in the United States, to give some protection.

I have quoted before Admiral Bobby Inman who is one of the principal architects of the FISA statute. Again, it was designed to, when we want to monitor an agent of a foreign power in the United States, go to a special court and get a warrant. It was not designed to apply to foreign terrorists overseas talking to terrorists overseas. And these constitutional protections that I suppose our friends on the other side of the aisle would like to extend to the terrorists turns the statute on its head.

What Admiral Inman says is to apply FISA to "monitoring foreign communications of suspected terrorists operating overseas such as Osama bin Laden and other key al Qaeda leaders turns the original intent of FISA on its head." This is the man who was principally responsible for writing the statute.

He says, contrary to some of the rhetoric coming from the Democrats, it is the members of al Qaeda, not American citizens, as our colleagues will say, it is al Qaeda who is the target of these intelligence-gathering activities.

I think the majority of the American people support the idea that we should be able to hear what al Qaeda is saying overseas without getting lawyered up and going to a court to get a warrant. We know this agenda is driven by many on their side of the aisle, the special interests, the ACLU, the trial lawyers, and it is such a dangerous policy.

Mrs. WILSON of New Mexico. If the gentleman would yield for a question, is it true that under the Protect America Act, in the Senate bill, the bipartisan Senate bill that we should vote here on this floor on as soon as possible, is it true that it is still against the law to listen to an American in the United States? Do you still need a warrant to listen?

Mr. McCAUL of Texas. You still need a warrant because the fourth amendment of the Constitution applies to persons in the United States. But the fourth amendment of the Constitution